

APPEAL NO. 041195
FILED JUNE 24, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 28, 2004. The hearing officer resolved the disputed issues by deciding that the respondent/cross-appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the second quarter, September 3 through December 2, 2003, and that the claimant is entitled to SIBs for the third quarter, December 3, 2003, through March 3, 2004. The appellant/cross-respondent (carrier) appealed, disputing the determination of SIBs entitlement for the third quarter. The claimant responded, urging affirmance of the challenged determination. The claimant also filed an appeal, disputing the determination of nonentitlement for the second quarter. The carrier responded, urging affirmance of the determination regarding the second quarter.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____; that the claimant's impairment rating is 15% or more; that the claimant had not commuted any impairment benefits; that the qualifying period for the second SIBs quarter was from May 22 through August 20, 2003; and that the qualifying period for the third quarter of SIBs was from August 21 through November 19, 2003.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criterion in issue is whether the claimant made a good faith effort to obtain employment commensurate with her ability to work during the qualifying periods for the second and third quarters. Rule 130.102(d)(5), relied on by the claimant in this case for SIBs entitlement, provides that the good faith requirement may be satisfied if the claimant "has provided sufficient documentation as described in subsection (e)." Rule 130.102(e) provides in part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. Although the claimant looked for work during a portion of the qualifying period for the second quarter, it was undisputed that the claimant did not look for work in each week of the qualifying period. The hearing officer specifically found that the claimant did not document that she searched for employment each week of the qualifying period for the second quarter and therefore did not make a good faith effort to obtain employment commensurate with her ability to work. The hearing officer did not err in finding that the claimant was not entitled to SIBs for the second quarter. The evidence did not reflect that the claimant looked for work in every week of the qualifying period as required by Rule 130.102(e).

With respect to the qualifying period of the third quarter, the hearing officer found that the claimant made a good faith effort to obtain employment commensurate with her ability to work because she had a plan, which she followed in looking for work, she sought jobs for which she was qualified, and she searched for work each week.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's decision that the claimant is not entitled to SIBs for the second quarter and that the claimant is entitled to SIBs for the third quarter is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **AMERICAN PROTECTION INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATE SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Chris Cowan
Appeals Judge